

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E152 OF 2024
(Before Hon. Lady Justice Hellen Wasilwa, J)

FREDRICK

WANYONYI.....PETITIONER/RESPONDENT

VS

**CHIEF EXECUTIVE OFFICER, KENYA MEDICAL
SUPPLIES AUTHORITY.....1ST
RESPONDENT/APPLICANT**

**KENYA MEDICAL SUPPLIES
AUTHORITY.....2ND
RESPONDENT/APPLICANT**

AND

**SAMUEL OLE TUNAI..... 1ST
CONTEMNOR**

**WAQO EJERSA.....2ND
CONTEMNOR**

**HESBON OMOLO.....3RD
CONTEMNOR**

**JANE MASIGA.....4TH
CONTEMNOR**

**BENARD BETT.....5TH
CONTEMNOR**

**STEPHEN BITOK.....6TH
CONTEMNOR**

**MARY AWINO.....7TH
CONTEMNOR**

**CATHERINE NGAHU..... 8TH
CONTEMNOR**

RULING

- 1 The 1st -2nd Respondents as well as the 1st -8th Contemnors filed a Notice of Motion dated 27th October 2025 seeking orders **THAT**: -
1. *Spent*
 2. *For reasons set out in the certificate of urgency, this Honourable Court do certify the instant Application as urgent and grant an urgent date when it may be heard inter-parties.*
 3. *Pending the hearing and determination of this Application, this Honourable Court be pleased to stay all other proceedings in this matter including the Sentencing Proceedings scheduled for 30th October, 2025.*
 4. *This Honourable Court do review, vary and/or set aside the Order issued on 29th September, 2025 that allowed the Petitioner's Contempt Application dated 23rd January, 2025 as prayed.*

1st and 2nd Respondents and 1st -8th Contemnors /Applicants' Case

- 2 The Applicants aver that the Petitioner filed an Application dated 5th December, 2024 under Certificate of Urgency and was thus placed before Lady Justice Linnet Ndolo on 6th December, 2024 who issued the *ex-parte* order: "A conservatory order is hereby issued staying the Respondents' decisions of sending the Petitioner on

compulsory leave as contained in the letter dated 29th November, 2024 ref. PN022 and the subsequent Notice to Show Cause dated 4th December, 2024 ref. PN022 pending the inter-partes hearing of the instant Application.”

- 3 Subsequently, this matter came up in Court on 17th December, 2024, this Court (*Lady Justice Hellen Wasilwa*) gave directions for the disposal of the said Application. The Conservatory Order issued on 6th December, 2024 was then extended and the matter set for Mention on 20th February, 2024.
- 4 The Applicants aver that the Petitioner later filed a contempt application dated 23rd January 2025, alleging that the 2nd Respondent's Board disobeyed the order issued on 6th December, 2024 for the following reasons: The Petitioner was not invited to the Board Meeting that took place on 13th January, 2025 even though he is the Corporation Secretary; The 2nd Respondent's Board have ordered the security personnel not to allow the Petitioner access to KEMSA premises and his workstation.
- 5 The Applicants aver that on 29th September, 2025, this Court allowed the said contempt application as prayed by the Petitioner. Further, this Court ordered the 1st - 8th Contemnors, who are members of the 2nd Respondent's Board, to appear before it on 30th October, 2025 for sentencing.

- 6 The Applicants aver that for the reason that the matter had come up for Mention, the substantive order of 29th September, 2025 that allowed the Petitioner's contempt application dated 23rd January, 2025 as prayed was made unprocedurally and in excess of the jurisdiction of the Court.
- 7 It is the Applicants' case that it is trite that where a matter is fixed for mention, as it was in this case, the Court was precluded from determining the said contempt application. This court could only determine the substantive issues arising from the said Application, which was not the case here, if both parties consent to that course and only after giving the parties an opportunity to make submissions thereon.
- 8 The Applicants aver that there was material non-disclosure, on the party of the Petitioner, his Counsel on record, *Messrs. Okumu Kubai & Company Advocates*, and the then 1st and 2nd Respondents' Counsel on record, *Messrs. V.A Nyamodi & Company Advocates*.
- 9 The Applicants aver that the court was not apprised that the Petitioner, having completed his annual leave, had since 16th December, 2024 resumed his office and was allowed to attend to duties. Additionally, the Advocates of the parties have been in negotiations since February 2025 with a view of settling this entire matter by entering into a Mutual Separation Agreement. The Petitioner's proposal on the Mutual Separation Agreement had been received and

considered by the 2nd Respondent's Board. The delay in concluding negotiations and the eventual recording of a consent had only been hindered by the fact that the 2nd Respondent's Board had sought and was awaiting the advice and concurrence of the Office of Attorney General (AG) and the Public Service Commission (PSC).

- 10 On one hand, the AG acts as the government's principal legal adviser and defender of the public interest. It provides legal advice to government ministries, departments and parastatals such as the 2nd Respondent on contracts and agreements. On the other hand, the PSC is responsible for managing human resources within the civil service. Therefore, given that the Petitioner is a civil servant, it was vital to obtain the input of the AG and the PSC on the terms of the said Separation Agreement taking into further account that the sum of money which was subject of the Mutual Separation Agreement was to be derived from public funds.
- 11 The Applicant further avers that the above process is still ongoing and despite the pendency of this matter the Petitioner has been enjoying all the benefits arising from his employment. As such none of the 2nd Respondent's Board members have willfully disobeyed the Order of 6th December, 2024 that stayed the decision to send the Petitioner on compulsory leave as contained in the letter dated 29th November, 2024 ref. PN022 and the subsequent

Notice to Show Cause dated 4th December, 2024 ref. PN022.

- 12 It is the Applicants' case that they reasonably believe that if the above facts had been brought to the attention of this Court, the Order of 29th September, 2025 would have not issued.
- 13 The Applicants avers that they are reasonably apprehensive that unless the directions and orders sought are granted, this Court will during the sentencing proceedings scheduled for 30th October, 2025 proceed to unjustly and unfairly punish the 1st - 8th Contemnors to their utter detriment and prejudice. It is therefore fair and just that the said order of 29th September, 2025 be reviewed, varied and set aside.

Petitioner/Respondent's Case

- 14 In opposition to the application, the Petitioner/Respondent filed a replying affidavit dated 12th November 2025.
- 15 The Petitioner/Respondent submitted that the orders issued on 29th September 2025 were procedural, the contempt application was unopposed, the Respondents/Contemnors having failed to file responses and submissions despite being granted multiple opportunities to do so.

16 The Petitioner/Respondent avers that contrary to the assertion that he has resumed his duties, Petitioner has been incapacitated in discharging his duties as by law provided. There is nothing untoward with the order regarding the suitability of the 2nd Respondent's Board members which followed a finding that the Board members were in violation of a court order.

17 The Petitioner/Respondent avers that the contempt application was based on the Respondents/Contemnors disobedience of the order issued by this court on 6th December 2024 in which the court decreed as follows:

"A conservatory order is hereby issued staying the Respondents' decisions of sending the Petitioner on compulsory leave as contained in the letter dated 29th November, 2024 ref. PNO22 and subsequent Notice to Show Cause dated 4th December, 2024 ref. PNO22 pending the inter partes hearing of the instant application."

18 It is the Petitioner/Respondent's case that the effect of the order as was confirmed by the court on 30th January 2025 was that the 1st Respondent was directed to forthwith allow the Petitioner resume his office and continue discharging his duties as per the terms of the contract of employment and the court order.

19 He avers that both on 6th December 2024 and 30th January 2025, the Respondents were represented in court by Mr.

Kemboy and Mr. Keverere. Despite this, the Respondents remain hell bent on disobeying the court order as they have insisted that the court never directed the Petitioner to resume work. Vide a letter dated 20th January 2025 his advocates wrote to the Respondent's Advocates demanding that they allow the petition resume duties as per the court's orders. Additionally, on 21st January 2025, the Respondents through their advocates on record responded indicating that his advocates efforts were *"attempts to coerce the Respondent into acceding to my intimidations though threats of non-existent orders such as the one you purport the Court issued directing that your client be allowed to resume duty."*

20 The Petitioner/Respondent avers that by virtue of his position he does not sit in the 2nd Respondent's Board of Directors which is established under section 5 of the Kenya Medical Supplies Authority Act (KEMSA Act). Additionally, Section 9A of the KEMSA Act provides for a Corporation Secretary of the Authority who shall have the following responsibilities

"a) provide guidance to the Board on their duties and responsibilities and on matters of governance; b) assist the Board in carrying out its work; c) be the custodian of the seal of the organization and account to the Board for its use; d) maintain and update the register of conflicts of interest; e) ensure that Board members are aware of all relevant laws affecting the organization; and f) facilitate effective

communication between the organization and the shareholders.”

- 21 He further avers that he plays a central role in the affairs of the 2nd Respondent as per statute. The KEMSA Act is clear and his participation is not pegged on invitation of the chair of the Board based on his discretion. Therefore, the Respondents’ action is not only *ultra vires* but further contemptuous of the orders issued by the court.
- 22 The Petitioner/Respondent avers that his decision to seek a specific order for access was as a result of the continued refusal by the Board members to deny him access. Even after this access was granted after the court expressly directed on 30th January 2025, the 21st Respondents have refused to allow him discharge his responsibility as a Corporation Secretary. They have further purported to reorganize the structure of KEMSA to dismember the office of the Corporation Secretary from that of the Board which is *ultra vires* the provisions of the KEMSA Act.
- 23 The Petitioner/Respondent avers that based on the provisions of the KEMSA Act as well as his job description, it is not possible for him to discharge my duties since the members have taken the position that his participation in the Board activities is on the discretion of the chairman despite clear provisions of the law.
- 24 It is the Petitioner/Respondent’s case that the court order was clear that he should discharge his duties in

accordance with the terms of his contract of employment and the court order. The Respondents cannot on one hand take the position that he is not required to sit in the Board and at the same time accuse him of not sitting in the office as the office is synonymous with the duties of that office based on the job description.

25 The Petitioner/Respondent avers that it is the duty of the employer, in this case the 2nd Respondent to provide him with work in accordance with my duties as set out under the KEMSA Act, his employment contract as read together with his job description.

26 The Petitioner/Respondent avers that by taking the position that the court order never directed the Respondents to allow him resume his duties despite the express order that was issued staying the Respondents' decision and subsequent notice to show cause, in the first instance, and an express order directing the Respondents to allow him to resume his duties in the second instance. The Respondents and the Contemnors are not only in contempt but continue to perpetuate the contemptuous act.

27 Additionally, the Respondents are in contempt by taking the position that as a Corporation Secretary, he is not entitled to sit in the Board and participate in the Board's activities notwithstanding the express provisions of section 9A of the KEMSA Act as read together with his contract of employment and job description.

- 28 The Petitioner/Respondent avers that the contempt application was first considered by the court in the presence of both parties on 30th January, 2025 when the court granted prayer no. 2 in the application, and directed the Respondents and contemnors to confirm compliance. The Respondents and contemnors did not comply with the directions of the court and requested for more time. The matter was slated for 13th March 2025 to confirm compliance on the part of the Respondents and contemnors.
- 29 The Petitioner/Respondent avers that on 13th March 2025, the Respondents/Contemnors requested for time to negotiate. The matter was listed on 23rd April, 2025 to confirm compliance on status of negotiations. A settlement was not reached on 23rd April 2025, 15th May 2025, 26th May 2025 and 12th June 2025 when it came in court to confirm settlement. On 7th July 2025, the court issued fresh directions that the Respondents/Contemnors to file responses to the contempt application and directed that the matter be mentioned on 21st July 2025 to confirm settlement. On 21st July 2025, the Respondents/Contemnors were issued with a further 7 days to file responses together with written submissions. The matter was later slated for mention on 29th September 2025 to confirm filing of responses.
- 30 When the matter came up for in court to confirm filing of responses on the contempt application, both the

Respondents and the Contemnors were represented in court by counsel. In addition, the question on settlement was a proposal by the Respondents/Contemnors application. There was no substantive position on settlement when parties attended court for compliance, the court issued final directions on filing of responses on the contempt application on 21st July 2025.

31 The Petitioner/Respondent avers that there was no response on record by the Respondents/Contemnors on 29th September 2025 when the matter came up for mention in court to confirm filing of responses and submissions on the part of the Respondent/contemnors. The Respondents/Contemnors' counsel was present in court. She did not object to the Contempt Application being allowed as prayed, as the said application remained unopposed.

32 The Petitioner/Respondent avers that the Respondent/Contemnors counsel did not request for an extension of time to either make submissions or representations on the Contempt Application. If anything, the Respondents/Contemnors had been given an opportunity to file submissions in addition to the Responses vide the directions of 7th July 2025 & 21st July 2025.

33 It is the Petitioner/Respondent's case that there is no law requiring the court to issue further directions on hearing of

an application which is unopposed. A further hearing date would not have served any purpose as the Respondents/Contemnors had failed to comply with the court's directions despite repeated opportunities being granted to them.

34 It is the Petitioner/Respondent's case that if for any reason that Contemnors have a problem with the prayers granted by the court, then the Contemnors should appeal the decision to the Court of Appeal including on question of jurisdiction which they now challenge.

35 The Petitioner/Respondent avers that even if the court were to find that it lacked jurisdiction to make such an order, the finding of contempt would still remain and the Contemnors would still be liable to appear in court for sentencing based on the finding of contempt arising from the Contempt Application.

36 The Petitioner/Respondent avers that the negotiations between the parties did not in any way stay the proceedings on contempt. In any case, the court was apprised of this fact until 7th July 2025 on which date the Respondents' advocates was yet to get instructions on settlement prompting the court to issue final directions on the disposal of the Contempt Application

37 He avers that the fact that he continues earning my salary does not in any way purge the contempt. The order requiring that he resume my duties as a Corporation

Secretary discharging my roles in that capacity in accordance with the law is yet to be complied with. The Respondents have willfully vowed not to obey this aspect of the order and remain adamant that he is not entitled to sit in the Board despite the order.

38 The Petitioner/Respondent avers that had the Respondent obeyed the orders of this court, the court would have now determined the Amended Petition on its merits. He is entitled under Article 48 of the Constitution to seek justice for gross violation of the law by the Respondents as is the case herein.

39 It is the Petitioner/Respondent's case that the court dismisses the Respondents/Contemnors Application as the same is without merit as the contemnors continue to remain in contempt of the orders of this court.

40 The Petitioner/Respondent avers that he stands to suffer injustice should the orders be set aside as the Respondents are keen on proceeding with a disciplinary in violation of the law and its own Human Resource Procedures while the Amended Petition which is meritorious continue to subsist before this court.

Respondents and Contemnors/Applicants'
Submissions

41 The Respondents/Applicants submitted that Rule 33 of the Employment and Labour Relations Court (Procedure) rules,

2016 lays down the jurisdiction and scope of review limiting it to the following grounds:

“(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling— if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; on account of some mistake or error apparent on the face of the record; if the judgment or ruling requires clarification; or for any other sufficient reason.”

- 42 They cited ***Shanzu Investments Ltd v Commissioner for Lands [1993] eKLR*** wherein the Court of Appeal adopted with affirmation the holding in ***Wangechi Kimita & Another v Mutahi Wakabiru CA No. 80 of 1985 (unreported)*** where it was held:

“any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the court by section 80 of the Civil Procedure Act and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous. The current position would,

then, appear to be that the court has unfettered discretion to review its own decrees or orders for any sufficient reason."

- 43 The Respondents/Applicants submitted that nowhere in that order did this Court order that the Petitioner resume his duties. All this Court did was to stay the undertaking of any disciplinary process that flows pursuant to and following from the issuance of the Show Cause letter. The truth of the matter is that, the Petitioner has not been subjected to any disciplinary process and he continues to earn his wages and benefits in full.
- 44 The Respondents/Applicants submitted that neither the 2nd Respondent's Board nor the individual members of the Board gave him instructions to prevent the Applicant from accessing his office. As a matter of fact, the issue of the Petitioner's resumption of duties has never, as stated by the 1st Respondent, been discussed by the Board. Additionally, the Petitioner admitted in the said Contempt Application that, up to the date he filed the said Application, he had been coming to the office without any hindrance save for the alleged denial of entry on 14th January, 2025 which is a bare faced lie.
- 45 The Respondents/Applicants submitted that the Petitioner has not refuted the averments made by the 1st Respondent in the instant Application concerning his erratic office attendance. In fact, he further makes fresh allegations, in what he terms as continued contempt, that

there has been a restructuring at the 2nd Respondent that have purportedly dismembered his office as Corporation Secretary. In support of this allegation, he has provided a document which he says is the 2nd Respondent's Organizational Structure.

46 It is the Respondents/Applicants' submission that an alleged flow chat depicting an organizational structure is not evidence of restructuring or dilution of the Petitioner's role as Corporation Secretary. More important, the said purported organizational structure produced by the Petitioner is but a document with no letterhead, no date and is not obvious to tell, on its face, who its author is.

47 The Respondents/Applicants submitted that the 1st Respondent has through the instant application demonstrated with supporting evidence that having completed his annual leave, the Petitioner has since 16th December, 2024 resumed his office and was allowed to attend to duties. Annexed to the instant Application were copies of documents that show that the Petitioner has been allowed access to his office on the off chances that he shows up to attend to his duties. Indeed, nowhere has the Petitioner in his Replying Affidavit dated 12th November, 2025 denied this fact.

48 It is the Respondents/Applicants' submission that contrary to the Petitioner's assertions, he is not a member of the 2nd Respondent's Board. Section 5 of the KEMSA Act sets out in unambiguous terms the members of KEMSA Board

and the Corporation Secretary is not one of them. In any event, attendance to any Board Meeting for none members is by invitation only at the discretion of the Chairman and with the consent of the other Board Members. Therefore, no law obliges the Board to invite the Petitioner to attend its meetings either in his individual capacity or as the Corporation Secretary.

49 The Respondents/Applicants submitted that Section 9A (2) of the KEMSA Act sets out the responsibilities of the Corporation Secretary to inter-alia include advising the Board on matters of governance, ensuring that the Board members are aware of all relevant laws affecting the organization as well as assisting the Board in carrying out its work. However, this does not mean that when a Corporation Secretary is not invited to a Board meeting as may be resolved from time to time by the Board Members, the said Corporation Secretary is hindered from undertaking any of the responsibilities set out in section 9A of the KEMSA Act.

50 The Respondents/Applicants submitted that the mere fact that the Petitioner was not invited for Board meetings does not in itself prevent the Petitioner from undertaking his duties as set out in the KEMSA Act and in his job description.

51 The Respondents/Applicants further submitted that Petitioner, having completed his annual leave, had since 16th December, 2024 resumed his office and was allowed

to attend to duties and access his workstation. Additionally, the parties have been negotiations since February, 2025 with a view of settling this entire matter by entering into a Mutual Separation Agreement. This is still ongoing and despite the pendency of this matter the Petitioner has been enjoying all the benefits arising from his employment.

52 The Respondents/Applicants submitted that none of the 2nd Respondent's Board members have willfully disobeyed the Order of 6th December, 2024 that stayed the decision to send the Petitioner on compulsory leave as contained in the letter dated 29th November, 2024 ref. PN022 and the subsequent Notice to Show Cause dated 4th December, 2024 ref. PN022.

53 It is the Respondents/Applicants' submission that they did not violate the orders of 6th December, 2024. If the Court had been made aware of the issues outlined, especially the fact that the Petitioner has all along been allowed to undertake his duties and received all his benefits, the finding of Contempt would not have been made. Therefore, the finding of contempt that was made by this Court on 29th September, 2025 ought to be set aside for that reason alone.

54 The Respondents/Applicants submitted that for the reason that the matter had come up for mention, the substantive order of 29th September, 2025 that allowed the Petitioner's contempt application as prayed was made unprocedurally

and in excess of the jurisdiction of the Court. Whereas the Petitioner argues that since there was no response to the contempt application as at 29th September, 2025 despite the Court granting time for a response to be filed, that fact alone did not give this Court jurisdiction to allow the contempt application when the matter was scheduled for a mention.

- 55 The Respondents/Applicants submitted that by allowing the Plaintiff's contempt application as prayed, this court also inadvertently allowed the prayer sought therein for a declaration to issue that the members of the 2nd Respondent's Board are unfit to hold office. However, it is trite law that the Employment and Labour Relations Court (ELRC) has no jurisdiction to determine if members of the 2nd Respondent's Board are fit or unfit to hold office.
- 56 The Respondents/Applicants submitted that the ELRC's mandate is limited to disputes arising from an employer-employee relationship, while constitutional and statutory matters concerning board composition, appointments and whether or not their members are fit for office fall under the purview of the High Court. Furthermore, appointments of chairpersons and Board members of State Corporations and/or election of any individual to public office is the prerogative of executive and/or of the electorate respectively. The ELRC has no jurisdiction in such appointments and/or elections.

- 57 The Respondents/Applicants submitted that the order of 29th September, 2025 was simply that the Contempt Application was allowed as prayed. It is not, as now contended by the Petitioner, that the Court upon making finding the Board members had violated a Court, proceeded further to hold that as a result, the said members were now unsuitable to hold office. The prayer to declare the 2nd Respondent's Board members as unfit to hold public office had been explicitly sought as prayer No. 6 in the said Contempt Application. Therefore, when the said Application was allowed in its entirety as indicated in the Order of 29th September, 2025 that prayer was also inadvertently allowed.
- 58 The Respondents/Applicants submitted that even in situations where you have previously adjudged public officers to have violated Court Orders, you have determined that this Court does not have power to declare such public officers unfit to hold public office notwithstanding the said finding of contempt.
- 59 The Respondents/Applicants submitted that they have shown sufficient reasons for why this Court should review and set aside the finding of contempt that it made on 29th September, 2025 and thus pray that the instant application be allowed as prayed.
- 60 The Respondents/Applicants submitted that this Court to be guided by the principle that 'costs follow the event'.

Therefore, should the court find in favour of the Defendant, costs should be awarded to him.

Petitioner/Respondent's Case

- 61 The Petitioner/Respondent submitted on three issues: whether the orders issued by the Court on 29th September, 2025 were unprocedural; whether in allowing the contempt application the court issued orders in excess of its jurisdiction; and whether the Respondents/Contemnors continue to be in contempt of the orders issued by the Court.
- 62 On the first issue, the Petitioner/Respondent submitted that the contempt application dated 23rd January, 2025 has been before the Court since 30th January 2025, when the Court granted prayer no. 2 and directed the Respondents/Contemnors to file their responses and submissions. Thereafter, the matter was mentioned in Court on various dates i.e. on 20th February 2025, 13th March 2025, 23rd April 2025, 15th May 2025, 26th May 2025, 12th June 2025, and 7th July 2025 to confirm compliance. At all times, the Respondents/Contemnors were duly represented by counsel.
- 63 The Petitioner/Respondent submitted that despite repeated extensions and indulgences granted by the Court, the Respondents/Contemnors failed to comply with directions to file their response. Although the parties were engaged in negotiations, this did not relieve the

Respondents/Contemnors of their obligation to respond to the contempt application, nor was it treated by the Court as a substitute for compliance. On 21st July 2025, the Court issued final directions granting them a further seven days to file both responses and written submissions, and fixed the matter for mention on 29th September 2025. On 29th September 2025, the Respondents/Contemnors had not filed a response or submissions. Their counsel was present in Court and raised no objection to the application being allowed as prayed. We submit that no request for additional time to comply was made.

- 64 The Petitioner/Respondent submitted that there is no legal requirement for a Court to set down an unopposed application for further hearing or to issue additional directions in circumstances where a party has repeatedly failed to comply with prior orders. Further mention or hearing dates would have served no useful purpose, given the Respondents/Contemnors' consistent non-compliance.
- 65 The Petitioner/Respondent submitted that the proceedings of 29th September 2025 were properly conducted, that the contempt application stood unopposed and consequently that the orders issued on that date were valid and regular.
- 66 On the second issue, the Petitioner/Respondent submitted that the Contempt Application arose from the Respondents' continued disobedience of the conservatory orders issued on 6th December 2024, staying the Respondents' decision of sending the Petitioner on compulsory leave and Notice to Show Cause issued

against him. On 30th January 2025, the Court confirmed the effect of the order issued on 6th December, 2024 by directing the 1st Respondent to forthwith allow the Petitioner to resume office and discharge his duties. This was a lawful order within the Court's constitutional and statutory mandate to grant and operationalize conservatory relief.

67 It is the Petitioner/Respondent's submission that on both 6th December 2024 and 30th January 2025, the Respondents were represented by counsel and were therefore fully aware of the orders. Therefore, the Respondents cannot now challenge the jurisdiction of the Court to avoid the consequences of their own non-compliance.

68 It is the Petitioner/Respondent's submission that enforcement of court orders is an inherent judicial power and in the circumstances of this case where the Respondents persistently refused to comply, the Court acted wholly within its mandate. Reliance was placed in ***Samuel M. N. Mweru & others versus National Land Commission & 2 others [2020] eKLR*** where the court stated thus:

“Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness

and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest”

69 On the third issue, the Petitioner/Respondent submitted that the Respondents/Contemnors remain in contempt of the Court’s orders of 6th December 2024 and 30th January 2025. Despite clear orders for the Petitioner to be allowed to resume duty, the Respondents/Contemnors deny the existence of such orders, and their claim that no resumption was directed is a deliberate and contemptuous misrepresentation.

70 The Petitioner/Respondent submitted that despite the clear statutory role of the Corporation Secretary under section 9A of the KEMSA Act and the duties outlined in the Petitioner’s job description, the Respondents/Contemnors continue to prevent him from sitting in the Board, wrongly asserting that this depends on the Chair’s discretion. This exceeds their statutory authority and constitutes an ongoing violation of the Court’s order requiring the Petitioner to carry out his duties according to his contract and the law.

71 The Petitioner/Respondent submitted that the Respondents’ attempt to restructure the organization’s organogram to detach the office of the Corporation

Secretary from the Board, in contravention of the KEMSA Act, constitutes a further act of contempt of the Court's orders. Furthermore, even after the Court expressly affirmed on 30th January 2025 that the Applicant must be granted access to the workplace to perform his duties, the Respondents continued to block him from doing so. Their refusal to permit him to execute the functions assigned under the Act, his job description and his contract of employment constitutes a further violation of the Court's orders.

72 The Petitioner/Respondent submitted that the Respondents/Contemnors have (i) denied the existence of express court orders, (ii) disrupted and undermined the Petitioner's statutory duties, (iii) attempted to restructure the organization contrary to KEMSA Act and (iv) refused to comply with the Court's orders on resumption and performance of duty by the Petitioner. These actions constitute continued contemptuous acts.

73 I have considered the averments and submissions of the parties herein. The applicants have filed this application seeking review orders on the ground of error which they aver occurred when this court proceeded to find the respondents in contempt on a day of mention without considering their case.

74 I have looked at the proceedings of this case and I take note of the orders given by this court on 3/10/2024 directing no further disciplinary process action be taken

against the petitioner by the respondent. The respondents were also directed to file their reply to the application within 7 days. The applicants were also directed to file further affidavit and submissions within 7 days and the respondents to file their submissions in 7 days. The matter was scheduled for mention on 30/10/24 when the petitioner intimated to court that they had received a response from the respondents who had confirmed that the interdiction against the petitioners had been lifted.

- 75 The parties agreed to mention the matter on 28/11/24 to see if they could resolve the entire petition. The settlement of the entire petition was never resolved. The parties sought on numerous occasions to try and resolve this matter out of court and continued mentioning the same over and over again and there was no solution.
- 76 The applicant petitioner then filed a contempt application without any settlement and the respondents were ordered to respond to it within 14 days on 7/7/2025. On 21/7/2025 the respondents had not responded to the contempt application. They were accorded a further 14 days to do so and mention slated on 29/9/25 to confirm compliance.
- 77 On 29/9/25 the respondents had not filed any submissions to the application again. The contempt applicant stood unopposed. On this day the court allowed the application as it was unopposed. This was done in the presence of the respondents. It is on this basis that the respondents have

filed the application for review averring that the contempt application was allowed on a mention date.

- 78 It is true that the contempt application was allowed since it was unopposed. The respondent applicants had been given 2 months to respond to it and never did so. It was on this basis that the court considered the contempt application and since it was unopposed was allowed. There was no error committed by this court as the orders in force then was to allow the petitioner back to work. The petitioner had set out a chronology of events which showed wilful disobedience by the respondents. The respondents did not oppose the averments by the petitioner. There was actually no error committed by the court in the finding that the respondents were in contempt of court. Indeed, there is no legal requirement that a court cannot proceed to determine a matter during mention.
- 79 In the circumstances, I find the application for review has no merit and is denied. Costs in the petition.

**Dated, Signed and Delivered Virtually at Nairobi
this 16th Day of December 2025.**

**HELLEN WASILWA
JUDGE**